

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON DESHAWN THOMAS,

Defendant-Appellee.

UNPUBLISHED

February 25, 2000

No. 207374

Oakland Circuit Court

LC Nos. 96-149280 FH,

96-149281 FH

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

The prosecutor appeals by leave granted defendant's sentences of five to twenty years each for defendant's two plea-based convictions of delivery of 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). We reverse and remand for resentencing.

Defendant pleaded guilty to the two delivery of cocaine charges, along with four lesser drug charges, after the trial court made a preliminary evaluation pursuant to *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993), and indicated that it was inclined to impose minimum sentences of nine years each for the two offenses involving delivery of 50 or more but less than 225 grams of cocaine. This preliminary evaluation would have entailed a slight downward departure from the statutorily mandated ten-year minimum term of imprisonment for the offenses. At the subsequent sentencing proceeding, the court found that substantial and compelling reasons existed to depart from the mandated minimum. Citing defendant's youth, remorse, concern for his family, and minimal criminal record, and the court's confidence that defendant would reform and its "faith in the dignity of people," the court sentenced defendant to consecutive terms of five to twenty years each for the two delivery of cocaine convictions.¹

MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii) states that a person convicted of delivery of 50 grams or more but less than 225 grams of a controlled substance "shall be imprisoned for not less than 10 years nor more than 20 years." Section 7401(3) mandates consecutive sentencing for these convictions. Section 7401(4) states that "[t]he court may depart from the minimum term of

imprisonment . . . if the court finds on the record that there are substantial and compelling reasons to do so.”

Our Supreme Court has declared that the statutory requirement that downward departures be justified by “substantial and compelling reasons” should not be interpreted to grant a trial court broad discretion to deviate from the minimum, because “such an interpretation would defeat the intent of the statute.” *People v Fields*, 448 Mich 58, 68; 528 NW2d 176 (1995). Thus, the Court determined that substantial and compelling reasons for downward departures for purposes of MCL 333.7401(4); MSA 14.15(7401)(4) may include “only those factors that are objective and verifiable.” *Id.* at 62.

A trial court’s determination of the existence or nonexistence of facts affecting the sentencing decision is reviewed for clear error; the determination that a particular factor is objective and verifiable is reviewed as a matter of law; a trial court’s determination that the objective and verifiable factors constitute “substantial and compelling reasons,” for departure is reviewed for abuse of discretion. *Fields*, at 77-78.

In this case, the trial court explained its decision to sentence defendant to five-year minimum terms as follows:

You’re 19 years old at the time of this event, and age has to be considered.

. . .

. . . [Y]ou’re a young man, and you have a life ahead of you. You now have a family, and you seem to be very concerned for your family, which I think is the finest way of behavior modification.

The stability of the Judeo-Christian ethic is when you have a family, you change your lifestyle and commit yourself to the offspring and your spouse. You show remorse.

* * *

You have but one prior felony. . . . How many people in Oakland County have not been sentenced to prison who have four or more felonies? You have but one. You have no misdemeanors. . . . I have faith that you’re going to modify your behavior.

I base it on what I’ve seen and what I’ve heard and my faith in the dignity of people, and that’s verifiable, too. That’s as objective as your bank account. That’s as objective as any other statement made by any other judge.

. . . If you ever come back and get in trouble again, I will be very sad, but . . . I don’t think you will.

In decreeing that “substantial and compelling” reasons for downward departures must be “objective and verifiable,” our Supreme Court in *Fields* specifically observed that “[a]n appellate court cannot review whether the defendant has expressed remorse, or if he has a desire to help others”

Id. at 69. In this case, the trial court credited both defendant's remorse and his desire to help his family. Further, the court's mention of "the dignity of people" seems a subjective factor under *Fields*.

Because the trial court used both objective and subjective factors to justify a downward departure from a mandatory minimum sentence, we vacate the sentences imposed and remand for resentencing. *Fields*, at 62. On remand, the court may again consider the objective factors of defendant's age and criminal record, and may focus on other objective factors if established. The court must justify any departure from the mandatory minimum sentence by reference only to objective and verifiable factors.

Remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Helene N. White

¹ The additional sentences that the court imposed for the other, lesser crimes are not at issue in this appeal.